



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

June 4, 1998

Reply To
Attn of: ECL-117

John D. Wagoner, Manager
U.S. Department of Energy
Richland Operations Office
P.O. Box 550, A7-50
Richland, WA 99352

Dear Mr. Wagoner:

Re: Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement), Milestone M-34 Negotiations

We are writing to express our extreme disappointment that the latest round of negotiations has failed to produce an acceptable schedule and set of milestones for the K-Basins. For almost three years, the Environmental Protection Agency (EPA) and the Washington Department of Ecology (Ecology) have been negotiating with the Department of Energy (DOE) on a schedule to remove deteriorating spent fuel from the leaking K-Basins. These negotiations have proven fruitless.

In April 1997, we finally reached tentative agreement on a set of milestones with substantial public support only to have DOE withdraw its approval after the public comment period. DOE's latest proposed schedule for the start of fuel removal from the basins is now 32 months longer than the schedule we tentatively agreed to in April 1997.

This situation is unprecedented. Never before, in the nine year history of the Tri-Party Agreement, have the regulators and DOE been so utterly unable to come to closure on a critical issue.

This stalemate means that the spent fuel in K-Basins is the one critical environmental problem at Hanford with no enforceable milestones in the Tri-Party Agreement. For three years, DOE has been unwilling to commit to a binding schedule to get this dangerous fuel out of the leaky basins and away from the Columbia River.

During those three years, the cost of the project has doubled, and the schedule for actually moving fuel out of the basins has become an ever-receding mirage. These basins have leaked in the past and contaminated the groundwater. They are well past their design life, and are vulnerable to earthquake damage. DOE senior officials have acknowledged that the K-Basins pose one of the most significant safety concerns in the entire DOE complex and require extraordinary steps to achieve safe storage of the spent fuel as rapidly as possible. Yet schedules continue to slip and costs climb as DOE contractors continuously change baseline schedules for the project, despite the very serious environmental and public health risks at the K-Basins.

The last straw came two weeks ago. In response to our questions, Duke Engineering staff reluctantly revealed that their estimate of project costs had climbed another \$200 million to \$1.6 billion, just one week after Duke's CEO testified under oath before Congress about his confidence in the previous budget and schedule.

It is now abundantly clear that our latest agreement cannot be met. It is impossible to establish final milestones agreed to by all parties (following public review and comment) by July 31, 1998 - the date we all agreed on two months ago.

So here is where we are today: we have no enforceable K-Basin commitments in the TPA; we have no prospect of successfully concluding the present negotiations; and we have no confidence whatever in any DOE contractor schedule or budget for this project.

We hold DOE, Fluor Daniel, and Duke, all three, responsible for this state of affairs.


As regulators, our first priority is to establish an enforceable schedule for this project. We intend shortly to trigger the dispute resolution process of the Tri-Party Agreement to settle this issue. First, however, we are requesting some information. The information sought in Enclosure A is critical for us to determine both the appropriate schedule as well as our regulatory options. We ask that you provide this information within fourteen days of your receipt of this letter.

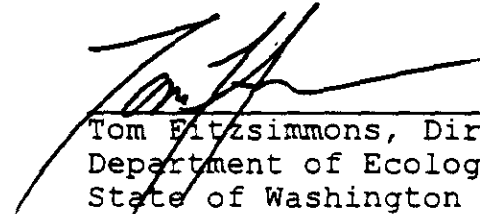
This letter also serves as notice to you that EPA and Ecology have determined that the K-Basins are best addressed at this time using CERCLA authority with EPA as the designated lead regulatory agency. In accordance with paragraph 88 of the Tri-Party Agreement, Ecology and EPA have consulted DOE in our

decision to change lead regulatory agency for this project. A completed change control form for the change has been provided to your staff.

If your staff have any questions about the attached information request, they should contact Doug Sherwood at EPA's Hanford Project Office. He can be reached at (509) 376-9529.

Sincerely,


Chuck Clarke
Regional Administrator
U.S. EPA, Region 10


Tom Fitzsimmons, Director
Department of Ecology
State of Washington

Enclosure

cc: Mary Lou Blazek, Oregon Office of Energy
Russell Jim, Yakama Indian Nation
Dan Ogg, Defense Nuclear Facilities Safety Board
Donna Powauke, Nez Perce Tribe
Merilyn Reeves, Hanford Advisory Board
J. R. Wilkinson, Confederated Tribes of the Umatilla Indian
Reservation
Ronald Green, Fluor Daniel Hanford
Tony McConnell, Duke Engineering & Services Hanford
John Conway, Defense Nuclear Facilities Safety Board
The Oregon and Washington Congressional Delegations

Enclosure A

SPENT FUEL PROJECT

INFORMATION REQUEST

- (1) The Spent Fuel Project initial contract between DOE and FDH
- (2) The Spent Fuel Project initial contract between FDH and DESH
- (3) The Spent Fuel Project initial set of performance agreements or comparable fee-determining items (PAs) between DOE and FDH
- (4) The Spent Fuel Project initial set of PAs between FDH and DESH
- (5) All contract modification requests among DOE, FDH, and DESH for the Spent Fuel Project from the start of the contract through May 1998.
- (6) All responses to contract modification requests for the Spent Fuel Project in item #5.
- (7) All PAs between DOE and FDH, and a record of which PAs were met through May 1998 for the Spent Fuel Project.
- (8) Copies of all formal correspondence among DOE, FDH, and DESH that has to do with technical scope, cost, or schedule through May 1998 for the Spent Fuel Project.
- (9) Copies of all correspondence (both ways) with the Defense Nuclear Facilities Safety Board (DNFSB) for the Spent Fuel Project.
- (10) Copy of most recent water chemistry data for both K-East and K-West basins.
- (11) Level 2 and 3 schedule for the December 1997 baseline and the Level 2 and 3 schedule that DOE had committed during M-34 negotiations to provide to EPA and Ecology on May 15, 1998 for the Spent Fuel Project. We understand that this latest schedule reflects changes since DOE, FDH, and DESH provided congressional testimony on May 12, 1998.

The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. §§ 9604(e)(7)(E) and (F), and 40 C.F.R. § 2.203(b). Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and only by means of the procedures, provided in 40 C.F.R. §§ 2.201-2.311. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you.